IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 30TH MAY 2007 / 9TH JYAISHTA 1929

CRP.No. 2397 of 1996(G)

RCA.3/1994 of RENT CONTROL APPELLATE AUTHORITY (DISTRICT JUDGE) OF KOLLAM
RCP.5/1991 of RENT CONTROLLER (MUNSIFF COURT), PUNALUR

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REVN. PETITIONERS/APPELLANTS/PETITIONERS:
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1. MEERASAHIB, S/O.IBRAHIM RAWTHER, TAPPER, RESIDING AT PALANILKKUNNATHIL VEEDU, MURINJAKAL KOODAL MURI, ADOOR TALUK, PATHANAMTHITTA.

2. S.SUBAIDA BEEVI, W/O.MEERASAHIB, RESIDING AT PALANIKKUNNATHIL VEEDU, MURINJAKAL, KOODAL MURI, ADOOR TALUK, PATHANAMTHITTA.

BY ADV. SRI.P.B.SURESH KUMAR(QUILON)

RESPONDENTS/RESPONDENTS/COUNTER PETITIONER:
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1. HASSANKUTTY RAWTHER, S/O.MUHAMMED RAWTHER, RESIDING AT YEETTIVILA VEEDU, PATHIRICKAL MURI, PATHANAPURAM VILLAGE.

ADDL. 2. PONNAMMA, WIFE OF HASSAN KUTTY RAWTHER, YEATTIVILA VEEDU, PATHIRIKKAL MURI, PATHANAMPURAM VILLAGE.

" 3. ABDUL JALEEL, SON OF HASSAN KUTTY RAWTHER, EATTIVILA VEEDU, PATHIRIKKAL MURI, PATHANAPURAM VILLAGE.

" 4. NAZEEMA, DAUGHTER OF HASSAN KUTTY RAWTHER, YEATTIVILA VEEDU, PATHIRIKKAL MURI, PATHANAPURAM VILLAGE.

(ADDL. RESPONDENTS 2 TO 4 ARE IMPLEADED AS PER ORDER DATED 2.3.07 IN C.M.P.NO.5395 OF 2002)

BY ADV. SRI.B.GOPAKUMAR
SMT.CHINCY GOPAKUMAR
SRI.ASWIN GOPAKUMAR
SRI.ANWIN GOPAKUMAR

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 30/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

C.R.P.No.2397 OF 1996

Dated 30th May, 2007

JUDGMENT

Koshy,J.

Revision petitioners filed a petition for eviction of the respondent (after death of the respondent legal representatives were impleaded as additional respondents 2 to 4). It is the case of the petitioners that they had title to the property under gift deed No.3328/77 and there was a thatched house in the petition schedule property. Lease deed was executed on 14.9.88 on a monthly rent of Rs.25/- to the respondent. Amongst various other contentions raised, it was also contended that the lease deed executed was not genuine and according to the petitioners, they themselves are the owners and title of the petitioners was also disputed. The rent control court found that since genuineness of the lease deed was disputed, whether petitioners are the owners of the building is to be decided by a civil court and there is a bonafide dispute regarding the title to the building and already suit was pending for declaration of possession and title over the property. The appellate court confirmed the above finding and dismissed the appeal filed by the petitioners with the following observations:

> "9. On going through the evidence I find that there is a bonafide dispute between the parties regarding the title to the building in question. Therefore, the question as to whether the petitioners are the owners of the building has to be decided by a civil court. Admittedly even prior to the institution of the proceedings the respondent has filed a suit for declaration of title and possession over the property and the suit is still pending.
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> 10. On a complete and careful consideration of the evidence and the circumstances in the case I find that the petitioners have not succeeded in proving that there is landlord tenant relationship between the petitioners and the respondent in respect of the petition schedule building. The Rent Control Court has properly appreciated the evidence and has come to the correct conclusion. I find no reason to interfere with the order passed by the Rent Control Court. This appeal is groundless and is liable to be dismissed."

It is the contention of the revision petitioners that they filed a suit for injunction as O.S.No.24 of 1991 and the respondent tenant filed O.S.No.30 of 1991 for declaration of title and possession as well as for injunction. Petition for injunction filed by the petitioners was dismissed finding that the respondent was in possession with consent though they they have got title. The suit filed by the respondent was allowed as regards the injunction is concerned, but, their claim for declaration

of title was dismissed. A copy of the above judgment and decree was made available before us for perusal. Since that was not considered by the authorities below, we are of the view that this document also should be considered and a fresh decision should be taken. Apart from the question of title, tenant has raised questions regarding fixity of tenure, non-liability to pay any rent, execution of lease deed etc. All contentions raised by both parties can be agitated afresh.

In the above circumstances, we set aside the orders passed by the courts below and remand the matter to the rent control court for a fresh decision. Both parties are free to adduce evidence and press their respective contentions. Parties shall appear before the Rent Control Court on 13.8.2007.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

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